IN THE HIGH COURT OF JUDICATURE AT BOMBAY
CIVIL APPELLATE JURISDICTION
FIRST APPEAL NO. 1174 OF 2002

Maharashtra Housing & Area Development Authority ..Appellants (Ori.Deft. No. 1)

versus

Ramashraya Bihari Yadav ..Respondent (Ori. Plaintiff)

Mr. S. G. Deshmukh with Mr. P. G. Lad for the Appellants.

Mr. R. A. Thorat the Respondent.

CORAM : D. G. DESHPANDE,J.

DATE : 22ND DECEMBER,2005

ORAL ORDER (IN CHAMBER) :

1. Heard learned counsel for the appellants and the respondent.

2. MHADA - original defendant No.1 in the suit has filed this appeal. The suit was filed by the respondent - plaintiff for permanent injunction simplicitor. The City Civil Court, Bombay, by its judgment and decree dated 28.6.2002 permanently restrained the appellants from obstructing the plaintiff’s possession in respect of structure

admeasuring 10’ x 25’ in plot admeasuring 40’ x 60’ situated on Hissa No. 10/P Survey No. 33, Adarsh Nagar, Link Road, Jogeshwari (W), Bombay. The appeal is filed on two grounds. Firstly, there could not have been permanent injunction against the lawful Body or Authority from evicting trespassers, and, therefore, the injunction should have been without interfering the rights of the Statutory Body. Secondly, on merits also, according to the appellants, the plaintiff was not entitled to injunction.

3. Copy of the pleadings was supplied to me. The plaintiff claims that he was the owner of the premises admeasuring 10’x 25’ within the compound of 40’x 60’ plot. According to the plaintiff his structure was situated in Survey No. 33 Hissa No. 10(P) and the defendants were trying to evict him or to disturb his possession. Therefore, on the basis of the previous possession, he filed a suit. The plaintiff also claimed to be the owner of the structure. His case was accepted by the trial court and the claim and contention of the appellants that they were in possession of the property was rejected and therefore this appeal.

4. So far as title of the plaintiff is concerned, the same was rightly attacked by the counsel for the appellants on the ground that the title is based on an Agreement for Sale dated 14th March 1983. It is not on a stamp paper nor it is registered, and, therefore not admissible in evidence for proving the title. This argument has to be accepted because the agreement is not registered nor it is on a stamp paper. Therefore, plaintiff is not the owner of the structure nor of the land, and, the findings of the trial court in that regard are correct.

5. So far as possession is concerned, it was the case of the plaintiff that his structure was there at any rate from 1985 (the suit came to be filed in 1998) and he has relied upon N.A. assessment, a copy of the assessment was filed in the compilation. It is at record page 27. That was issued by the Additional Tahsildar, N.A. Andheri, Bombay. The date is not legible but it is with regard to show cause notice dated 26th May or March, 1985. Therein it is written that "the land comprising S. No. 33 H. No. 10pt. CTS of

Village Oshiwara belong to Zorastrain society. The said land is being used for non agricultural purpose (residential) unauthorizedly since 1984. The structure in the land is shown in the accompanying plan, and it is constructed by the present respondent." The plaintiff heavily relied upon this document to show that his structure was in existence since 1985 or 1984. He also relied upon a ration card. Admittedly, and, obviously, the ration card will not give any reference to the survey number. It can at the most show Ward Number and Room No. The trial court granted decree on the basis of these documents.

6. Mr. Thorat for the respondent - original plaintiff strenuously urged that if the plaintiff succeed in proving that his structure was in existence, in any case, from 1985 as per the NA order, then he is entitled for protection, and, he cannot be evicted except by following due process of law. This is the crucial question involved in this appeal because the trial court has granted the decree to the plaintiff on the basis of this legal aspect of the matter.

7. I heard the matter and posted it for orders on 15.12.2005. But after going through the record, it was necessary to hear the Advocates, again, with reference to that N.A. Assessment and re-structuring of the hut by the plaintiff, and, accordingly, I heard them again.

8. Mr. Deshmukh for MHADA - appellants, therefore, contended that may be that in the N.A. Assessment, existence of the structure is shown but the question is, firstly, whether the plaintiff had any right to construct the structure initially. Admittedly, the plaintiff is not the owner of the land, that Zorasthrian Society was the owner of the land, the land was acquired by MHADA and possession was taken and from the date of acquisition, the plaintiff could not claim any ownership right over the land on which the structure was standing.

9. Mr. Deshmukh, therefore, contended that even if the N.A. Assessment shows that there was a structure it was an illegal structure, and, therefore, when the plaintiff in the original suit failed to get any injunction in his favour and that order was challenged in the appeal but without any

success, then MHADA got a right to demolish that structure. Accordingly MHADA demolished the structure of the plaintiff. Mr. Deshmukh, pointed out that thereafter the plaintiff reconstructed the structure without any permission from any court either the trial court or by the High Court, before whom the matter had appeared in the form of Appeals. Mr. Deshmukh, therefore, contended that what the plaintiff has done to seek leave of the court to amend the plaint to include the claim of reconstruction. But the plaintiff constructed the structure without any permission from any Authority either Municipal Corporation of Greater Mumbai or from MHADA, and therefore, according to Mr. Deshmukh, if originally the structure was illegal, it was demolished by MHADA within the authority and powers granted to MHADA by the Statute then the question would be whether the plaintiff's structure, now, in the circumstances, could be declared as legal, to compel MHADA to follow due process of law, again. Mr. Deshmukh therefore, contended that after the demolition of the structure, the plaintiff cannot get a right to reconstruct until he establishes his right in the land.

10. As against this, Mr. Thorat contended that the plaintiff has amended the plaint challenging the demolition and claiming reconstruction and this was decreed by the court in the following manner :

> "Plaintiff is allowed to reconstruct the suit structure which was admeasuring 10 x 25' ...at his own costs."

Therefore, according to Mr. Thorat, if the structure is illegally demolished, then the trial court was fully justified in granting permission to erect the structure, and, now, MHADA cannot demolish it again without following due process of law.

11. It is pertinent to note here that even though the plaintiff has challenged the illegality of the demolition, no evidence whatsoever was given by the Plaintiff to show how the demolition was illegal, no submissions in that regard were made before the trial court. It is clear that though the suit was decreed, the plaintiff did not get any findings in that regard. Therefore, there is no finding of the trial court that demolition was

illegal, nor any observation in that regard. Admittedly, the plaintiff had no right to the land. He is not the owner of the land nor was he owner thereof, at any time, in the past. The land belonged to Zorastrian Society, MHADA acquired it and got its possession. Therefore, structure of the plaintiff, as noted in the N.A. order, was illegal. That structure came to an end when the demolition took place. He did not obtain permission of Municipal Corporation of Greater Mumbai, or MHADA, in doing so. Admittedly, therefore, reconstructed structure is also illegal, firstly, because it is not on the land of the plaintiff, and, secondly, because it is constructed without permission of any Authority. As against this, Mr. Thorat, contended that the trial court decreed the suit and granted permission to the plaintiff to construct. The plaintiff has constructed the structure but Mr. Deshmukh contended that even if it is so the trial court has not come to the conclusion that the plaintiff has any right in the land, and, trial court did not give any finding that the demolition was illegal. The question is therefore whether the trial court was justified in granting the decree i.e. permission to reconstruct without coming to

the conclusion that demolition was illegal, and, in my considered opinion, the answer has to be in the negative.

12. It may be that plaintiff's structure was there since 1985, but when the plaintiff has no right to the land and when MHADA had demolished it, then the trial court could not have and should not have granted permission for reconstruction unless the plaintiff was successful in proving the right to the land or right to have structure. No evidence was adduced by the plaintiff in that regard regarding his right in the land or right to have his structure on the land of MHADA after its demolition.

13. Admittedly, after the suit was filed in 1998 there was no injunction against MHADA restraining MHADA from demolishing the structure or dispossessing the plaintiff. Therefore, there was, no restraint upon MHADA in demolishing the structure. MHADA being the owner of the property was justified in demolishing, in the facts of this case, the structure under the rights conferred upon it by the Statute, and, therefore, the structure was demolished legally under the rights granted and the

powers acquired by MHADA under the statute. It cannot be said to be an illegal demolition. In any case, the Plaintiff has failed to get any declaration in that regard. If the demolition is not illegal, then the trial court should have rejected the prayer of the plaintiff for reconstruction.

14. If the original structure of the plaintiff had not been touched after filing of the suit, then the possession of the plaintiff would have been required to be protected and MHADA could have been directed to follow due process of law, but, when in absence of the injunction order in favour of the plaintiff, MHADA demolished the structure being the owner of the property and then while granting permission to reconstruct, the trial court should have seen as to what was the right of the plaintiff in the suit property. Admittedly, the plaintiff has no right in the suit property. His structure was also illegal and therefore decreeing the suit of the plaintiff only on the point of previous possession, was not, at all proper.

15. The trial court has not at all considered

this aspect i.e. regarding the right of the plaintiff over the property and has decreed the suit only on the basis of previous possession. It is clear from the judgment of the trial court, that the trial court lost sight of this important aspect of the matter. In the result, the appeal is required to be allowed. Hence, the following order:

ORDER

. Appeal is allowed.

. Judgment and decree of the trial court dated 28.6.2002 in B.C.C.C. Suit No. 2809 of 1998, is set aside. Suit of the plaintiff is dismissed. However, in the circumstances, operation of this order is stayed for a period of six weeks from today.

22.12.2005 (D.G. DESHPANDE, J.)